

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)	Docket No. CAA-05- 2004 0020
)	
Demolition Contractors, Inc.)	Consent Agreement and Final
and)	Order
Pitsch Engineering, Inc.)	
Grand Rapids, Michigan)	
)	
Respondents.)	
)	

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EPA REGION 5

CONSENT AGREEMENT AND FINAL ORDER

I. JURISDICTIONAL AUTHORITY

1. This is a civil administrative action instituted and settled pursuant to Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.34 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA), brings this administrative action seeking civil penalties under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

3. The Respondents are Demolition Contractors, Inc., and Pitsch Engineering Inc., both corporations doing business in Michigan.

II. REGULATORY BACKGROUND

4. The New Source Performance Standards (NSPS) for Nonmetallic Mineral Processing Plants at 40 C.F.R. Part 60, Subpart 000, applies to the following affected facilities, which commenced construction, reconstruction, or modification after August 31, 1983, in fixed or portable nonmetallic mineral processing plants: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or railcar loading station.

5. "Affected facility" under the NSPS means, with reference to a stationary source, any apparatus to which a standard is applicable. 40 C.F.R. § 60.2.

6. The NSPS at 40 C.F.R. § 60.672(c) limits the discharge of particulate matter from any crusher to no more than 15 percent opacity.

7. The NSPS at 40 C.F.R. § 60.11(d) requires that at all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.

8. Since 1976, the Administrator has delegated authority to implement the provisions of the NSPS and the NESHAP to the State of Michigan's Department of Natural Resources, now the Michigan Department of Environmental Quality (MDEQ). Notice of this delegation was last published on July 16, 1984, and included all future standards promulgated for additional pollutants and source categories under the NSPS and NESHAP standards. 49 Fed. Reg. 28708.

9. The National Enforcement Standards for Hazardous Air Pollutants (NESHAP) for asbestos at 40 C.F.R. Part 61, Subpart M, applies to owners and operators of demolition or renovation activities. 40 C.F.R. § 61.145

10. Among other things, the NESHAP requires the owner and operator of demolition or renovation activity to timely update its notice of intent to demolish or renovate when the amount of asbestos affected changes by at least 20% (§ 61.145(b)(2)); adequately wet regulated asbestos-containing material (RACM) and ensure it remains wet until collected and contained (§ 61.145(c)(6)(i)); contain RACM in leaktight wrapping (§ 61.150(a)(1)(iii)); wait 10 days after providing update notice of when demolition is to commence (§ 61.145(b)(3)(i)); and provide notice prior to commencing a building demolition (§ 61.145(b)(3)(iv)(C)).

11. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for violations of the NSPS and the asbestos NESHAP that occurred on or after January 31, 1997, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

12. Section 113(d)(1) of the Act limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

III. STIPULATIONS

13. Respondents are "persons" as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

14. Demolition Contractors, Inc. operates a nonmetallic mineral processing facility that crushes and sorts broken concrete and other demolition-related materials for processing at 200 North Park Street, NE, Walker, Michigan.

15. The facility operates under a Michigan general permit to install (PTI) for nonmetallic mineral crushing facilities, issued on April 9, 2002. Among other things, the PTI contains special condition 14, which limits visible emissions from the

"modified concrete crushing process" to 10 percent opacity, unless the emission source is regulated by NSPS.

16. Certain equipment at Demolition Contractor's plant are "affected facilities" subject to the NSPS for Nonmetallic Mineral Processing Plants, 40 C.F.R. Part 60, Subpart 000 (§§ 60.670 - 60.676), because the equipment was either constructed or modified after August 31, 1983.

17. On March 31, 2003, U.S. EPA Region 5's Air and Radiation Division issued a Notice of Violation and Finding of Violation, alleging violations of the Michigan SIP and the NSPS. The NOV alleged Pitsch failed to comply with its PTI, which violated Michigan Air Pollution Control Commission Rule R336.1201 (Rule 201), pertaining to Permits to Install. This rule is part of the federally enforceable SIP for Michigan.

18. Demolition Contractors, Inc., d/b/a Pitsch Companies and Pitsch Wrecking, performed demolition and asbestos removal operations at the following times and places:

- a. Coloma Charter Township Hall, Coloma, Michigan in 2002;
- b. St. Mary's School, Grand Rapids, Michigan, in 2000;
- c. Department of Transportation, Howell, Michigan, in 2001;
- d. Beer and Wine Wholesalers, Lansing, Michigan, in 2002.

19. Pitsch Engineering, Inc. performed demolition and asbestos removal operations at the Thornapple Kellogg Middle School, Middleville, Michigan, in 1999.

20. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

IV. Violations

21. The NSPS at 40 C.F.R. § 60.672(c) limits fugitive emissions from crushers to 15 percent opacity. A representative of the Michigan Department of Environmental Quality (MDEQ) inspected Demolition Contractor's Walker, Michigan, plant on December 3, 2001, December 4, 2001, April 26, 2002, and July 1, 2002. During the inspections, MDEQ documented opacities greater than 15 percent, in violation of 40 C.F.R. § 60.672(c).

21. A contractor for Pitsch Companies performed Method 9 opacity readings at the Walker, Michigan plant on December 27, 2002. These opacity readings, which were associated with the primary crusher, documented opacities greater than 15% in violation of 40 C.F.R. § 60.672(c).

22. These opacity readings also constitute violations of the approved Michigan SIP for particulate matter, which was published in the *Federal Register* on 05/06/80 at 45 FR 29790.

23. Respondent Pitsch Engineering, Inc. failed to provide proper notification for removal of RACM 10 days before demolition operations commenced at the Thornapple-Kellog School in 1999 in violation of the asbestos NESHAP at 40 C.F.R. § 61.145(b).

24. Respondent Pitsch Engineering failed to adequately wet RACM and ensure it remains wet until collected and contained during demolition activities at the Thornapple-Kellog School on June 29, 1999, in violation of the asbestos NESHAP at § 61.145(c)(6)(i).

25. Respondent Pitsch Engineering failed to contain RACM in leak tight wrapping at the Alpine Avenue facility used for temporary storage of demolition debris from the Thornapple-Kellogg School demolition project on June 29, 1999, in violation of the asbestos NESHAP at § 61.150(a)(1)(iii).

26. Respondent Demolition Contractors, Inc. failed to adequately wet RACM and ensure it remains wet until collected and contained during demolition activities at St. Mary's School on March 22, 2000, in violation of the asbestos NESHAP at § 61.145(c)(6)(i).

27. In 2002, Respondent Demolition Contractors, Inc. failed to wait 10 days before conducting demolition activities after providing an update notice of when demolition was to commence at the Department of Transportation Project in Howell, Michigan, in violation of the asbestos NESHAP at § 61.145(b)(3)(i).

28. Respondent Demolition Contractors, Inc. failed to provide notice prior to commencing a building demolition in August 2002, at the Beer and Wine Wholesalers facility in Lansing, Michigan, in violation of the asbestos NESHAP at § 61.145(b)(3)(iv)(C).

29. Respondent Demolition Contractors, Inc., during demolition activities at the Coloma Charter Township Hall on May 12 through 14, 2002, failed to adequately wet RACM and ensure it remains wet until collected and contained in violation of the asbestos NESHAP at § 61.145(c)(6)(i); and failed to contain RACM in leak tight wrapping, in violation of the asbestos NESHAP at § 61.150(a)(1)(iii).

V. TERMS OF SETTLEMENT

30. The parties agree that settling this action is in the public interest, that the entry of this Consent Agreement and Final Order (CAFO) without the filing of a Complaint or engaging in further litigation is the most appropriate means of resolving this matter, and that the purpose of this CAFO is to ensure compliance with the Act, the New Source Performance Standards, Subpart 000, and the Asbestos NESHAP;

NOW, THEREFORE, before the taking of any testimony, upon the alleged violations, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

31. This settlement is pursuant to, and in accordance with, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

32. Demolition Contractors, Inc. and Pitsch Engineering, Inc. admit the jurisdictional allegations in this CAFO and neither admit nor deny the factual allegations.

33. Demolition Contractors, Inc. and Pitsch Engineering, Inc. consent to the issuance of this CAFO, the assessment of a civil penalty and the performance of Supplemental Environmental Projects (SEPs), as outlined in Section VII of this CAFO.

34. Demolition Contractors, Inc. and Pitsch Engineering, Inc. consent to all of the conditions in this CAFO.

35. Demolition Contractors, Inc. and Pitsch Engineering, Inc. waive their right to a hearing as provided at 40 C.F.R. § 22.15(c).

36. Demolition Contractors, Inc. and Pitsch Engineering, Inc. waive their right to contest the allegations in this CAFO, and waives their right to appeal under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

37. Demolition Contractors, Inc. and Pitsch Engineering, Inc. certify that they are complying fully with the provisions of the NSPS, Subpart OOO and the Asbestos NESHAP.

38. This CAFO constitutes a settlement by U.S. EPA of all claims for civil penalties pursuant to Section 113 of the Act, 42 U.S.C. § 7413, for the violations alleged in Section IV of this

CAFO. Nothing in this CAFO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of Demolition Contractors, Inc. or Pitsch Engineering, Inc. arising from the violations alleged in this CAFO or liability related to other violations of the Act. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by U.S. EPA, and it is the responsibility of Demolition Contractors, Inc. and Pitsch Engineering, Inc. to comply with such laws and regulations.

39. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

40. Each party shall bear its own costs and attorneys' fees in connection with the actions resolved by this CAFO.

41. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, Region 5.

42. "Parties" shall mean U.S. EPA, Demolition Contractors, Inc. and Pitsch Engineering, Inc..

VI. CIVIL PENALTY

43. Pursuant to Section 113(e) of the Act, 42 U.S.C. § 7413(e), in determining the amount of the penalty assessed, U.S. EPA took into account (in addition to such other factors as

justice may require), the size of Respondents' businesses, the economic impact of the penalty on Respondents' business, Respondents' full compliance history and good faith efforts to comply, the duration of the violations, payments by Respondents of penalties previously assessed for the same violations, the economic benefit of noncompliance, and the seriousness of the violations. Based on an analysis of the above factors, including, Respondents' cooperation, prompt return to compliance, and agreement to perform SEPs, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$55,000 (Fifty Five Thousand Dollars).

44. Respondents must pay the \$55,000 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," in accordance with paragraphs 45 and 46 below, on or before May 1, 2004.

45. Respondents must send the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

46. A transmittal letter, stating Respondents' names, complete addresses, the case docket number, and the billing document number must accompany the payment. Respondents must write the case docket number and the billing document number on the face of the check. Respondents must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

John H. Tielsch, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3509

47. This civil penalty is not deductible for federal tax purposes.

48. Respondents are jointly and severally liable for payment of the civil penalty referenced in paragraph 44. If Respondents do not pay timely the civil penalty, or if Demolition Contractors, Inc. fails to timely pay any stipulated penalties due under paragraph 57, below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

49. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C.

§ 3717. Respondents will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Respondents will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

VII. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

50. Demolition Contractors, Inc. has agreed to complete the following Supplemental Environmental Projects (SEPs):

a. Asphalt paving of the gravel/dirt driveways at Demolition Contractor's concrete crushing operation to reduce dust from truck traffic which has been a long time source of citizen nuisance complaints. The areas to be paved are described in Attachment 1 to this CAFO.

b. Realignment of conveyors and equipment at the concrete crushing plant to reduce dust generation, as more fully described in Attachment 2 to this CAFO.

c. Installation of a new, larger water well pump to improve overall water pressure for the plant's water spray system. Specifications for the new pump are contained in Attachment 3 to this CAFO.

51. Demolition Contractors, Inc. must spend at least \$46,000 in the performance of these SEPs and may not use any amount of this sum as a tax deduction.

52. Demolition Contractors, Inc. certifies that it is not required to perform or develop any SEP listed in paragraph 49 by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Demolition Contractors, Inc. further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

53. Demolition Contractors, Inc. must submit SEP completion reports to U.S. EPA for each SEP listed in paragraph 50 on or before June 1, 2004. Each report must contain the following information:

- a. detailed description of the SEP as completed;
- b. description of any operating problems and the actions taken to correct the problems;
- c. itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. certification that Demolition Contractors, Inc. has completed the SEP in compliance with this CAFO;
- e. certification that the cost of the SEP was not deducted from Demolition Contractors, Inc.'s taxes; and
- f. description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

54. Demolition Contractors, Inc. must submit all notices and reports required by this CAFO by first class mail to:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

55. In each report that Demolition Contractors, Inc. submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

56. Following receipt of the SEP completion reports described in paragraph 53 above, U.S. EPA must notify Demolition Contractors, Inc. in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Demolition Contractors, Inc. 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 58.

57. If U.S. EPA exercises option b. above, Demolition Contractors, Inc. may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Demolition Contractors, Inc.'s objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Demolition Contractors, Inc. a written decision on its objection. Demolition Contractors, Inc. will comply with any requirements that U.S. EPA imposes in its decision. If Demolition Contractors, Inc. does not complete the SEP as required by U.S. EPA's decision, Demolition Contractors, Inc. will pay stipulated penalties to the United States under paragraph 57 below.

58. If Demolition Contractors, Inc. violates any requirement of this CAFO relating to any SEP, Demolition Contractors, Inc. must pay stipulated penalties to the United States as follows:

a. Except as provided in subparagraph b, below, if Demolition Contractors, Inc. did not complete the SEP satisfactorily according to this CAFO, Demolition Contractors, Inc. must pay a stipulated penalty of \$40,000 for failure to complete the SEP described in paragraph 50a; \$2,000 for failure to complete the SEP described in paragraph 49b; and \$4,000 for failure to complete the SEP described in paragraph 49c.

b. If Demolition Contractors, Inc. did not complete any one or more of the SEPs satisfactorily, but U.S. EPA determines that Demolition Contractors, Inc.: (i) made good faith and timely efforts to complete each SEP; and (ii) certified, with supporting documents, that it spent at least 90 percent of the amount required in paragraph 51 on the SEPs, Demolition

Contractors, Inc. will not be liable for any stipulated penalty.

c. If Demolition Contractors, Inc. satisfactorily completed the SEPs, but spent less than 90 percent of the amount required in paragraph 51, Demolition Contractors, Inc. must pay a stipulated penalty of \$5,000.

d. If Demolition Contractors, Inc. failed to submit timely any of the SEP completion reports required by paragraph 53 above, Demolition Contractors, Inc. must pay a stipulated penalty of \$100 for each day after the report was due until it submits the report.

59. U.S. EPA's determinations of whether Demolition Contractors, Inc. satisfactorily completed the SEP and whether it made good faith, timely efforts to complete the SEP will bind Demolition Contractors, Inc.

60. Demolition Contractors, Inc. must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Demolition Contractors, Inc. will use the method of payment specified in paragraph 44, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

61. Any public statement that Demolition Contractors, Inc. makes referring to the SEP must include the following language, "Demolition Contractors, Inc. undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Demolition Contractors, Inc. for violations of the New Source Performance Standards at its Walker, Michigan facility."

62. If an event occurs which causes or may cause a delay in completing a SEP as required by this CAFO:

a. Demolition Contractors, Inc. must notify U.S. EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Demolition Contractors, Inc.'s past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Demolition Contractors, Inc. must take all reasonable actions to avoid or minimize any delay. If Demolition Contractors, Inc. fails to notify U.S. EPA according to this paragraph, Demolition Contractors, Inc. will not receive an extension of time to complete the SEP.

b. If the parties agree that circumstances beyond the control of Demolition Contractors, Inc. caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.

c. If U.S. EPA does not agree that circumstances beyond the control of Demolition Contractors, Inc. caused or may cause a delay in completing the SEP, U.S. EPA will notify Demolition Contractors, Inc. in writing of its decision and any delays in completing the SEP will not be excused.

d. Demolition Contractors, Inc. has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

VIII. General Provisions

63. This CAFO settles U.S. EPA's claims for civil penalties for the violations alleged in Section IV of this CAFO.

64. Nothing in this CAFO restricts U.S. EPA's authority to seek Respondents' compliance with the Act and other applicable laws and regulations.

65. This CAFO does not affect Respondents' responsibility to comply with the Act and other applicable federal, state and local laws, and regulations.

66. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Respondents' "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

67. The terms of this CAFO bind Respondents, and their successors, and assigns.

68. This CAFO constitutes the entire agreement between the parties.

**U.S. Environmental Protection
Agency, Complainant**

Date:

3/11/2004



Stephen Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

CONSENT AGREEMENT AND FINAL ORDER

Demolition Contractors, Inc. and Pitsch Engineering, Inc.
Grand Rapids, Michigan
Docket No. CAA-5-2004-

Demolition Contractors, Inc., Respondent

Date: 1-26-04 By: Steven Pitsch

Pitsch Engineering Inc., Respondent

Date: 1/27/04 By: [Signature]

CONSENT AGREEMENT AND FINAL ORDER

**Demolition Contractors, Inc. and Pitsch Engineering, Inc.,
Grand Rapids, Michigan
Docket No. CAA-5-2004-**

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk.

Dated: 3/15/2004

A handwritten signature in black ink, appearing to read "Steve Rothblat" or similar, written over a horizontal line.

Thomas V. Skinner
Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590